

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Howard G. Page

Confirmation No.: 8911

Application No.: 09/498,515

Group No.: 3622

Filed: 02/04/2000

Examiner: Yehdega Retta

For: ADVERTISING INSERTION FOR A VIDEO-ON-DEMAND SYSTEM

Mail Stop: Appeal Brief - Patents

Commissioner for Patents

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REPLY BRIEF

Introductory Comments

Pursuant to the provisions of 37 C.F.R. § 41.41, Appellant files this Reply Brief in response to the Examiner's Answer dated February 28, 2011. The Examiner's Answer was filed in response to the Appeal Brief filed by Appellant on December 13, 2010. The Appeal Brief was filed in response to the Final Office Action dated July 19, 2010. A Notice of Appeal was filed on October 19, 2010. This Reply Brief provides responses to selected arguments in the Examiner's Answer but does not repeat all of Appellant's arguments contained in the Appeal Brief nor supplant the arguments in the Appeal Brief.

Response to Examiner's Answer

Rejection of Claims 1, 5, 7, 8, 10-12, 17, 18, 20, and 21 under 35 U.S.C. § 103(a)

Claims 1, 5, 7, 8, 10-12, 17, 18, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swix in view of Farmer in view of Zigmond in view of XTV and further in view of Eyer.

Unaddressed Claims

The Final Office Action lists dependent claims 7, 8, 11, 17, 18, and 21 in the summary of the rejection (page 2, last ¶). However, these claims are not explicitly discussed and no specific explanation of the rejection of these claims is provided (*see* Final Office Action, pages 2-4). The Examiner's Answer explicitly addresses claims 7, 8, 17, and 18 for the first time. Claim 11 is not explicitly addressed in the Final Office Action or the Examiner's Answer. As a result, Appellant was not afforded opportunity to prosecute these claims.

Mischaracterization of Swix and Farmer

In the Appeal Brief, Appellant argues that Farmer fails to teach transferring advertising content and the insertion point for the advertising content over a second transport system. The Final Office Action concedes that Swix "failed to teach that the insertion point is transferred to the target device via the second transport system which uses less bandwidth" and asserts this limitation is found in Farmer (pg. 6, lines 4-6). However, only a single transport system exists between Farmer CTV System 20 and the target viewer devices, which are located to the right of Farmer's figure 1 in an area referenced "to cable distribution system and subscribers." Therefore, it is not possible for Farmer to teach *transferring the insertion point to the target viewer device over the second transport system* as asserted in the Final Office Action because Farmer does not have a second transport system which links CTV System 20 to the target viewer devices. The Farmer timing signals and video content are combined at Switch 25 and transported to the target viewer devices over **a single transport system**.

In response to this argument against Farmer, the Examiner's Answer returns to Swix and states that "Swix teaches broadcast server 105 delivers the continuous broadcast program in one channel and delivers other programs and advertisements in other channels" (pg. 8, lines 4-6). Different channels within a single transport system are not the same as different transport systems. Swix does not teach use of a *second transport system*. This lack of a second transport system in Swix is acknowledged in the Final Office Action (pg. 6, lines 4-6) and Farmer was relied on for this reason.

The Examiner's Answer then returns to an argument which relies on Farmer and states "the cue tones are transferred to the target view (sic) from system 21 via the second transport system (23)" (pg. 8, lines 12-13). However, this is a mischaracterization of Farmer because, as described above and in previous responses, Farmer teaches only a single transport system delivering content to target viewer devices (figure 1). Farmer transport link 23 does not deliver cue tones **to the target viewer device** as asserted. In Farmer, all of the signals are internally used by the content delivery system and the content and advertising is delivered to the target viewer devices **over a single transport system**.

The Examiner's answer also states that "[t]he sole difference between the primary reference and the claimed subject matter is that the primary reference does not disclose the q-tone being transferred over the second transport system" (pg. 8, lines 14-16). This is an over generalization and further mischaracterization of Swix because there are other significant differences between Swix and the claimed subject matter. For example, claim 1 recites *transferring the selected video advertising to the target viewer device over a second transport system* which uses less bandwidth than the transport system used to transfer the video content. Swix transmits advertising content over a different channel **of the same transport system** but fails to teach use of a second transport system of this type and transfer of the video advertising over this second transport system.

In the Appeal Brief, Appellant also argues that the cue tones used in Farmer cannot be analogized to the *insertion points* of claim 1 because the insertion points *comprise data indicating where in the selected video content the selected video advertising is to be inserted*. The Farmer cue tones do not contain data indicating positions within the selected video content. Because cue tones do not contain this type of

data, they cannot be analogized to *insertion points* which *comprise data indicating where in the selected video content the selected video advertising is to be inserted*.

In response to this argument, the Examiner's Answer states that Farmer "transports the cue tones separately" and "by this definition the cue tones are considered to consist of data" (pg. 11, lines 14-15). As described previously, the Farmer cue tones are **not separately transported to the target viewer devices**. The cue tones are used by switch 25 to assemble the content before it is delivered to the target viewer device as a over a single transport system (figure 1). Since the content delivery system makes use of the cue tones internally, they do not need to *comprise data indicating where in the selected video content the selected video advertising is to be inserted*. The Examiner's Answer infers that the Farmer cue tones comprise data based on the premise that they are separately transported to the target view devices but this premise is inconsistent with Farmer's architecture and operation.

The issues discussed above with respect to Farmer cannot be resolved through reference to Swix, Zigmond, XTV, or Eyer. The Notice of Panel Decision from Pre-Appeal Brief Review issued on 11/18/2009 indicates the application is allowable over Swix, Zigmond, XTV, and Eyer.

Claim 12 contains limitations similar to those discussed with respect to claim 1 and is allowable for at least the same reasons.

Claims 5, 7, 8, 10, 11, 17, 18, 20, and 21, while separately allowable over the art of record, depend from otherwise allowable independent claims 1 and 12. Appellant therefore refrains from further discussion of these dependent claims for the sake of brevity.

Improper Combinations

Appellant refers the Board to the improper combination arguments made in the Appeal Brief.

Conclusion

In light of the foregoing remarks, Appellant submits that the final rejection of claims 1, 5, 7, 8, 10-12, 17, 18, 20, and 21 is in error, and respectfully requests its reversal.

Appellant believes no additional fees are due with respect to this filing. However, should the Office determine that additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

/Todd C. Adelmann/

SIGNATURE OF PRACTITIONER

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